WA 203/2005
PRESENT
HON'BLE THE CHIEF JUSTICE MR. A.K.GOEL
HON'BLE MR JUSTICE UJJAL BHUYAN

J U D G M E N T AND O R D E R(CAV)

UJJAL BHUYAN J
This writ appeal is directed against the judgment and order dated 27-01-2005 pas sed by the learned Single Judge in W.P.(C) No.5425/2001, dismissing the writ pet ition filed by the appellant seeking quashing of the panel list prepared for app ointment to the post of Graduate Teacher in Singari Senior Madrassa in the distr ict of Nagaon and for a direction to the respondents to hold a fresh selection.

2. Appellant as the writ petitioner had filed W.P.(C) No.5425/2001. Case of the appellant as projected in the writ petition was that an advertiseme nt was published on 10-02-1999 by the authority of Singari Senior Madrassa invit ing applications for one post of Graduate Teacher, one post of F.M. and one post of M.M. Appellant applied for the post of Graduate Teacher. Interview was held whereafter, a panel list was prepared by the Selection Committee containing the names of as many as 19 candidates. According to the appellant, no decision was t aken on this selection. On the other hand, there were allegations regarding anom alies in preparation of the panel list. He had secured 46.5 % marks in graduatio n and, therefore, he deserved selection. With the above grievance, he filed the writ petition.

3. An additional affidavit was filed by the appellant in support of the writ petition. It was stated that a report was called for by the Government from the Deputy Director of Madrassa Education, Assam regarding the selection. Report was submitted by the Deputy Director on 13-08-2003 stating that the Selec tion Board had selected respondent No.4 for the post of Gradate Teacher and one Md. Imdadur Rahman for the post of F.M. vide separate panels but appointments co uld not be made due to ban imposed by the Government on appointment. The Deputy Director observed that the selection was based on the performance in the written test and interview and not on the marks obtained in the qualifying examination, such as B.A.

4. Affidavit was filed by respondent No.4. She stated that pursuant to the advertisement dated 10-02-1999, she applied for the post of Graduate Tea cher. She appeared in the written test and interview for the said post. Selectio n Board selected her for the post of Graduate Teacher as she had secured the hig hest mark in the written test and interview. Thereafter, the school authority ad opted resolution dated 10-06-1999 to appoint her in the said post. The select li st and the resolution were forwarded to the office of the Deputy Director, who i n turn placed the relevant file before the Director of Secondary Education, Assa m for approval. Approval was granted on 16-12-1999. She had filed a writ petitio n before this Court, being W.P.(C) No.3898/2001, which was disposed of vide orde r dated 02-08-2002 with the direction that the respondents would examine the mat ter and as and when the ban was lifted, they would consider the matter.

5. Learned Single Judge by the judgment and order dated 27-01-2005 dismissed the writ petition.

6. Aggrieved, the writ petitioner as the appellant has filed the pr esent appeal.

7. Mr. Dhar, learned Counsel for the appellant submits that learned Single Judge erred in dismissing the writ petition inasmuch as the selection sh ould have been on the basis of the marks secured in the BA examination as there

was no scope for holding written and viva-voce test as per guidelines. The view taken by the learned Single Judge is contrary to the decision of a Division Bench of this Court dated 01-12-1994 in Writ Appeal No.465/1994. He has also placed reliance on the decision of the Hon'ble Apex Court in the case of Inder Parkash Gupta -Vs- State of Jammu and Kashmir and ors. reported in (2004) 6 SCC 786.

8. Submission of Mr. Dhar, learned Counsel for the appellant, has been opposed by Mr. A. D. Choudhury, learned Standing Counsel, Education Department and Mr. D.A. Kaiyum, learned Counsel for the respondent No.4. Mr. Choudhury, learned Standing Counsel submits that the guidelines relied upon by the appellant were never applied and were finally withdrawn way back in the year 1994. In this connection, he has referred to the affidavit filed by the Deputy Director in the writ appeal. Mr. Kaiyum, learned Counsel for the respondent No.4 submits that the Government vide order dated 29-07-2008 had accorded approval to her appointment as Graduate Teacher in Singari Senior Madrassa against existing vacancy. Thereafter, Director of Madrassa Education, Assam issued order dated 25-08-2008 appointing her in the said post. Pursuant thereto, she joined on 27-08-2008 and since then she is serving as such.

9. Submissions made have been considered.

10. Learned Single Judge on due consideration held as under :-

6. I have considered the submissions made by the learned counsel for the parties and have perused the materials available on record. The comparative statement prepared on the basis of the academic distinction of the candidates is not a select list. After receiving applications of such candidates, a selection was conducted which comprised of both written and viva voce test. After such selection, the merit list was prepared by the members of the Selection Board. As per the said merit list, the respondent No.4 scored altogether 103 marks and was selected for appointment. On the other hand, the petitioner has scored only 56 marks.

7. The petitioner, apart from the said statement, has also placed reliance on the communication made by the Deputy Director of Madrassa Education and the i/c superintendent / Secretary of the Singari Senior Madrassa. Such communications were made after more than 4 years i.e. on 13-08-2003 and 15-11-2003. It is not understood as to who such communications could be made against the respondent No.4, when she was recommended by the duly constituted Selection Board.

8. The power under Article 226 of the Constitution of India is the power of judicial review. Needless to say that a cautious approach is required to be adopted in the matter of selection, unless a grave irregularity or illegality or any malafide exercise of power by the members of the Selection Board or any violation of the rules are indicated, the writ court will not sit on an appeal over the evaluation made by a duly constituted Selection Board. The writ Court does not have the expertise or measuring rod so as to measure the selection made by a duly constituted Selection Board. The Selection Board upon consideration of the relevant aspect of the matter including the selection by written and viva voce test recommended the respondent No.4 for appointment as Graduate Teacher. The Selection Board is the best judge to adjudge the suitability of the candidates. It was only on that basis, the Selection Board found the respondent No.4 to be suitable for the post and accordingly the recommendation was made in her favour.

9. Mr. H.R.A. Choudhury, learned Sr. Counsel for the respondent No.4 placed reliance on a decision of this Court in WP(C) No.6645/2001 (Mofizul Islam Vs. State of Assam & Ors.) In the said case, by order dated 01-07-2004, this Court upheld the selection in respect of the post for FM teacher which forms part of the advertisement in the instant case. As indicated above, three posts were advertised. In the said case, the proceeding was concerned with the post of FM. In the instant case, the post in question is the Graduate Post. In the said case also the selection procedure was challenged which did not find favour of this Court. Similar recommendation made by the Deputy Director of Madrassa Education for canceling

the selection also did not find favour.

11. There is nothing on record to show that the selection in question ought to have been conducted solely on the basis of marks obtained by the candidates in the degree examination. The Division Bench judgment relied upon by the appellant referred to certain procedure for appointment of teachers and other staff in Madrassas as on 21-11-1985 which provided that selection of candidates should be purely on merit and in ascertaining merit, the results obtained by the candidates from HSLC to degree examination should be given primary importance. However, the advertisement for the present post did not indicate that the selection would be on the basis of such criteria. As a matter of fact, even the procedure referred to above did not exclude the possibility of having written test and interview to test the merit of the candidates in addition to the marks obtained in the examinations from HSLC to BA to select the suitable candidates. Section 5(2) of the Assam Madrassa Education (Provincialisation) Act, 1995 provides for constitution of a Selection Board to conduct selection for recruitment to any teaching or non-teaching post in a Madrassa. However, no norms for selection have been laid down. In the absence of any statutory norms, the employer has the discretion to conduct the selection in a manner which he feels most suitable and which would result in the selection of the best candidate. Appellant has not been able to show any statutory restriction on the Madrassa authority from holding written and viva-voce test. Appellant had appeared in written test and interview. He did not raise any objection then. He took a calculated chance. Only when he found himself not selected, he filed the writ petition. The decision relied upon by the learned Counsel for the appellant is entirely on a different factual trajectory and is inapplicable to the facts of the present case. In that case, the statutory rule provided for 100 marks for viva voce test as against 40 for other criteria, which was held by the High Court to be contrary to law, which view was upheld by the Hon’ble Supreme Court. We fail to understand how this judgment can come to the aid of the appellant. Moreover, the selection of respondent No.4 had been approved by the competent authority and, thereafter, she was appointed on 27-08-2008.

12. In view of above and in view of the subsequent developments as noticed above, no ground for interference is made out. Accordingly, we agree with the view taken by the learned Single Judge.

13. There is no merit in the writ appeal.

14. Writ appeal is dismissed.